

**FRANCES A. STOCKTON**

**V.**

Respondent

Insurance Carrier

<sup>1</sup> Petition for Review at 1.

**FINDINGS OF FACT AND ANALYSIS**

The Board's review of preliminary hearing orders is limited. Not every alleged error of law or fact is subject to review. The Board can review only allegations that an ALJ exceeded his or her jurisdiction.<sup>2</sup> This includes review of the jurisdictional issues listed in K.S.A. 44-534a(a)(2), which are: (1) whether the employee sustained an accident, repetitive trauma or resulting injury, (2) whether the injury arose out of and in the course of the employee's employment, (3) whether notice is given, and (4) whether certain defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the claim.<sup>3</sup>

Whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). The issue of whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an ALJ has jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>4</sup>

The Board has consistently held that whether a claimant was terminated for cause, and whether a claimant is entitled to TTD benefits pursuant to K.S.A. 2014 Supp. 44-510c(b)(2)(C), are not jurisdictional issues listed in K.S.A. 2014 Supp. 44-534a(a)(2).<sup>5</sup>

Since this review raises no compensability issues, and there has been no showing the ALJ exceeded her authority, the petition for review must be dismissed for lack of jurisdiction.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>6</sup> Moreover, this

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<sup>2</sup> K.S.A. 44-551.

<sup>3</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

<sup>4</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

<sup>5</sup> See *Gosnell v. Adventures While Growing Childcare Center, Inc.*, No. 1,069,327, 2014 WL 4402476 (Kan. WCAB Aug. 18, 2014); *Willis v. Clearview City*, No. 1,067,116, 2014 WL 1340598 (Kan. WCAB Mar. 24, 2014); *Chappell v. Sugar Creek Packing Co.*, No. 1,068,774, 2014 WL 3055470 (Kan. WCAB June 5, 2014); *Beaver v. Spangles*, No. 1,067,204, 2014 WL 517253 (Kan. WCAB Jan. 16, 2014); *Dominguez-Rodriguez v. Amarr Garage Doors*, No. 1,058,613, 2012 WL 1652979 (Kan. WCAB Apr. 24, 2012).

<sup>6</sup> K.S.A. 44-534a.

review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2014 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

**CONCLUSION**

Since no jurisdictional issues enumerated in K.S.A. 44-534a have been raised, and there has been no showing the ALJ exceeded her jurisdiction, respondent's petition for review is dismissed for lack of jurisdiction.

**DECISION**

**WHEREFORE**, the undersigned finds respondent's petition for review is dismissed for lack of jurisdiction.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of November, 2016.

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HONORABLE GARY R. TERRILL  
BOARD MEMBER

c: Matthew R. Bergmann, Attorney for Claimant  
mbergmann@fuflaw.com  
akonda@fuflaw.com

James B. Biggs, Attorney for Respondent and its Insurance Carrier  
jbiggs@cavlem.com  
gbronson@cavlem.com

Honorable Rebecca Sanders, Administrative Law Judge